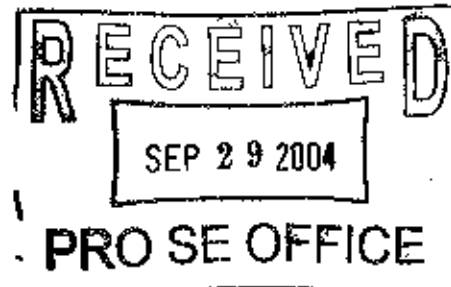


Original

**PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF  
HABEAS CORPUS BY A PERSON IN STATE CUSTODY**

<b>UNITED STATES DISTRICT COURT</b>	<b>EASTERN DISTRICT OF NEW YORK</b>
Name: <b>RACKY RAMCHAIR</b>	Prisoner No.: 95-A-8180
Place of Confinement: Attica Correctional Facility P.O. Box 149 Attica, N.Y. 14011-0149	
Name of Petitioner (include name under which convicted) <b>RACKY RAMCHAIR</b>	Name of Respondent (authorized person having custody of petitioner) <b>V. JAMES CONWAY, Superintendent Attica Correctional Facility</b>
The Attorney General of the State of: <b>NEW YORK</b>	
<b>PETITION</b>	
<ol style="list-style-type: none"> <li>1. The name and location of the court which entered the judgment of conviction under attack herein is: Supreme Court, County of Queens, State of New York.</li> <li>2. The date the judgment of conviction was rendered is: April 28, 1997.</li> <li>3. The length of the sentence(s) imposed is/are: Concurrent sentences of 10 to 20 years and 5 to 10 years, to be served consecutively to a previously imposed sentence of 9 to 18 years.</li> <li>4. The nature of the offense(s) involved is/are: Robbery in the first and second degrees.</li> <li>5. The plea I entered was: Not guilty. I did not enter a guilty plea to one count or indictment, and not a guilty plea to another count or indictment.</li> <li>6. I had a jury trial.</li> <li>7. I pled not guilty at the trial.</li> <li>8. I appealed from the judgment of conviction.</li> <li>9. Regarding that appeal: <ol style="list-style-type: none"> <li>(a) The name of the court to which I appealed is the Supreme Court of the State of New York, Appellate Division, Second Department.</li> <li>(b) The appeal resulted in my conviction being affirmed.</li> </ol> </li> </ol>	



(c) The Order of affirmance is dated September 29, 2003, and its citation is People v. Ramchair, 308 A.D. 2d 601, 764 N.Y.S.2d 725 (2d Dept. 2003).

(d) The ground(s) raised on the appeal is/are:

(i) **APPELLANT WAS RETRIED IN VIOLATION OF HIS CONSTITUTIONAL RIGHT NOT TO BE PLACED IN DOUBLE JEOPARDY FOR THE SAME OFFENSE WHERE, AT HIS PRIOR TRIAL, THE COURT DISCHARGED THE DELIBERATING JURY AND DECLARED A MISTRIAL WITHOUT DEFENSE COUNSEL'S CONSENT, ALTHOUGH THERE WAS NO MANIFEST NECESSITY THAT IT DO SO. U.S. CONST., AMENDS. V, XIV; N.Y. CONST., ART. I, §6.**

(ii) **APPELLANT WAS DEPRIVED OF DUE PROCESS AND HIS RIGHT TO PRESENT A DEFENSE BY THE TRIAL COURT'S RULING WHICH PRECLUDED DEFENSE COUNSEL FROM TESTIFYING TO REBUT THE PROSECUTION'S EVIDENCE THAT COUNSEL HAD ATTENDED THE LINEUP AT WHICH APPELLANT WAS IDENTIFIED AND HAD IMPLICITLY APPROVED OF ITS COMPOSITION BY FAILING TO RAISE ANY OBJECTIONS WITH THE POLICE OFFICER WHO WAS CONDUCTING THE LINEUP PROCEDURE. U.S. CONST., AMENDS. VI, XIV; N.Y. CONST., ART. I, §6.**

(e) I sought further review of the decision on appeal by applying for leave to appeal to the New York State Court of Appeals, and:

(i) Leave to appeal was denied.

(ii) The Certificate denying leave is dated December 22, 2003, and its citation is People v. Ramchair, 1 N.Y.3d 578, 775 N.Y.S.2d 794 (2003).

(iii) The grounds raised in the leave application are the same as those specified in subparagraph 9(d) above.

(f) I did not petition for certiorari in the United States Supreme Court.

10. Other than a direct appeal from the judgment of conviction and sentence; I have not previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal.

11. This action has been filed within the time period required by statute.

12. The grounds upon which I claim that I am being held unlawfully are:

(a) **Ground One:**

**APPELLANT WAS RETRIED IN VIOLATION OF HIS CONSTITUTIONAL RIGHT NOT TO BE PLACED IN DOUBLE JEOPARDY FOR THE SAME OFFENSE WHERE, AT HIS PRIOR TRIAL, THE COURT DISCHARGED THE DELIBERATING JURY AND DECLARED A MISTRIAL**

**Supporting Facts:** The factual allegations pertaining to Ground **ONE**, are set forth in petitioner's appellate brief, page 3-25.

(b) **Ground Two:**

**APPELLANT WAS DEPRIVED OF DUE PROCESS AND HIS RIGHT TO PRESENT A DEFENSE BY THE TRIAL COURT'S RULING WHICH PRECLUDED DEFENSE COUNSEL FROM TESTIFYING TO REBUT THE PROSECUTION'S EVIDENCE THAT COUNSEL HAD ATTENDED THE LINEUP AT WHICH APPELLANT WAS IDENTIFIED AND HAD IMPLICITLY APPROVED OF ITS COMPOSITION BY FAILING TO RAISE ANY OBJECTIONS WITH THE POLICE OFFICER WHO WAS CONDUCTING THE LINEUP PROCEDURE. U.S. CONST., AMENDS. VI, XIV; N.Y. CONST., ART. I, §6.**

**Supporting Facts:** The factual allegations pertaining to Ground **TWO**, are set forth in petitioner's appellate brief, page 34-41.

13. Each of the grounds listed in subparagraphs 12(a) and (b) above were previously presented in State court on my aforementioned direct appeal.
  - (a) The State appellate court was vested with proper authority to hear those grounds; and
  - (b) Those grounds were fairly presented to that court in a manner that fully appraised it of their Federal Constitutional nature at that time.
14. I do not have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack herein.
15. The following is a name & address list of each attorney who represented me during various stages of the judgment attacked herein:
  - (a) During pre-trial proceedings: Mr. Jonathan Latimer III.
  - (b) At trial: Jonathan Latimer III.
  - (c) At sentencing: Jonathan Latimer III.
  - (d) On appeal: Pamela Peters and Harold Ferguson of counsel.

16. I was sentenced on more than one count of an indictment in the same court and the same time.
17. I do not have any future sentence to serve after I complete the sentence(s) imposed by the judgment under attack herein.

**WHEREFORE**, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 20, 2004.

*R. Ramcharan*

RACKY RAMCHAIR

#95-A-8180

Attica Correctional Facility

P.O. Box 149

Attica, New York 14011-0149

file  
RR/bd